

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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NOEL VALDIVIA, SR.,

NO. CIV. S-05-0416 FCD DAD

Petitioner,

v.

ORDER

JILL BROWN, Warden, et al.,

Respondents.

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This matter is before the court on respondent Jill Brown's ("respondent") renewed application for a stay of the court's March 14, 2008 order granting petitioner Noel Valdivia, Sr.'s ("petitioner") habeas petition. Respondent moves for a stay of the court's order pending appeal in light of intervening authority. Petitioner opposes the motion, asserting that the motion is moot under the circumstances in this case.

Federal Rule of Appellate Procedure 8(a) provides that a party must move in the district court for a stay of the judgment or order of a district court pending appeal. In the context of a habeas corpus matter, "Federal Rule of Appellate Procedure 23(c)

1 provides that, when the Government appeals a decision granting a
2 writ of habeas corpus, the habeas petitioner shall be released
3 from custody," unless the court rendering the decision orders
4 otherwise. Hilton v. Braunskill, 481 U.S. 770, 772 (1987).¹
5 Rule 23(c) "undoubtedly creates a presumption of release from
6 custody in such cases," but the presumption may be overcome where
7 the factors traditionally considered in deciding whether to stay
8 a judgment in a civil case, "tip the balance against it." Id. at
9 774, 777. These factors include: "(1) whether the stay applicant
10 has made a strong showing that he is likely to succeed on the
11 merits [of its appeal]; (2) whether the applicant will be
12 irreparably injured absent a stay; (3) whether the issuance of
13 the stay will substantially injure the other parties interested
14 in the proceeding; and (4) where the public interest lies." Id.
15 at 776-77.

16 In this case, the court's March 14, 2008 order, which
17 granted petitioner's habeas petition, ordered:

18 Within thirty days of the date of this order, the
19 California Board of Parole Hearings (formerly the Board
20 of Prison Terms) must calculate a term for Petitioner
21 in accordance with the requirements of California Penal
Code § 3041(a). Within forty days of this order,
respondent must file a notice with the court
identifying the date set for Petitioner's release.

22 After the court denied respondent's motion to stay on March 21,
23 2008, respondents successfully moved for a stay in the United
24 States Court of Appeals for the Ninth Circuit. Subsequently, on

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26 ¹ Fed. R. App. Proc. 23(c) provides: "While a decision
27 ordering the release of a prisoner is under review, the prisoner
28 must - unless the court or judge rendering the decision, or the
court of appeals, or the Supreme Court, or a judge or justice of
either court orders otherwise - be released on personal
recognizance, with or without surety."

1 May 5, 2010, the Ninth Circuit lifted its stay, noting that
2 respondents had failed to demonstrate a likelihood of success on
3 the merits.

4 On June 4, 2010, the Board of Parole Hearings conducted a
5 remedial parole hearing and set Valdivia's total period of
6 confinement at 284 months, or 12 years and 8 months. At that
7 time, Valdivia had served almost 29 years in prison. On June 7,
8 2010, Valdivia moved for his immediate release. On June 25,
9 2010, the court granted the motion and ordered Valdivia released
10 from prison within fifteen days. On July 8, 2010, Valdivia was
11 released from prison.²

12 Because the Board of Parole hearings calculated a term for
13 Petitioner in accordance with the requirements of California
14 Penal Code § 3041(a) and set a date for release, and because
15 petitioner has been released, the court's March 14, 2008 order
16 has been fully executed. As such, there is nothing for the court
17 to stay.³ Accordingly, respondent's motion to stay is DENIED as
18 MOOT.

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21 ² In opposition to petitioner's motion for immediate
22 release, respondents argued that petitioner should not be
23 released until the Governor had the opportunity to exercise his
24 authority to review the Board's decision. The time for the
Governor to act on the Board's decision has now expired, and the
Governor has not rendered a decision in Valdivia's case.

25 ³ The court notes that respondents' motion does not
26 actually seek a stay, but rather reversal of the court's March
27 14, 2008 order. Indeed, respondents provide that "staying this
28 matter will properly result in Valdivia's re-incarceration."
(Renewed Application for Stay, filed Oct. 29, 2010, at 4 n.1.)
While intervening authority may or may not require reversal by
the Ninth Circuit, this court does not have jurisdiction to order
the relief sought by respondents.

IT IS SO ORDERED.

DATED: December 8, 2010

A handwritten signature in black ink, appearing to read "Frank C. Damrell, Jr.", written in a cursive style.

FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE